

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

LEI QIN, On Behalf of Himself and All
Others Similarly Situated,

Plaintiff,

v.

EARTHWHILE ENDEAVORS, INC.,

Defendant.

Case No.

CLASS ACTION

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Lei Qin (“Mr. Qin” or “Plaintiff”), by his attorneys, alleges, upon personal knowledge as to his own acts and as to all other matters upon information and belief based upon, *inter alia*, the investigation made by and through his attorneys, as follows:

INTRODUCTION

Pet care industry participants have become acutely aware in recent years that pet parent consumers are trending toward “natural” and “organic” pet care products for their pets. Numerous market studies have confirmed this trend, one of which concludes as follows:

The report, ‘Natural, Organic and Eco-friendly Pet Products in the US, estimates combined sales of natural pet foods and natural pet care products will grow by 10 percent to 15 percent over the period from 2014-17. Sales are projected to reach US\$9.4 billion by 2017, up from an estimated US\$4.1 billion in 2012.¹

¹ <http://www.petfoodindustry.com/articles/3304-natural-pet-products-market-to-grow-23-percent-in-2013>

Responsive to trending consumer preferences for natural and organic pet care products, Defendant Earthwhile Endeavors, Inc. dba Earthbath (hereinafter “EWI” or “Defendant”) created an “All Natural” line of pet shampoo (“Product(s)”), purporting to be “All Natural” and “Totally Natural” but, in reality, being highly synthetic. EWI has perpetrated a massive deception on the American pet parent consumer through the marketing of its pet shampoos as “All Natural” and “Totally Natural.”

JURISDICTION AND VENUE

1. Claims asserted herein arise under the laws of the State of New York.
2. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because the matter in controversy, upon information and belief, exceeds \$5,000,000, exclusive of interest and costs, and this is a class action in which certain of the Class members and Defendants are citizens of different states.
3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), because the acts and transactions alleged herein, including the purchase and receipt of the product at issue, occurred in this District.

PARTIES, BACKGROUND

4. Plaintiff’s household cats, whose names are QIQI and BENBEN are bathed about once a month in the summer and less frequently in the winter.
5. Plaintiff is a resident of the Borough of Brooklyn, Kings County, works in the Borough of Manhattan, New York County and, hence, is a resident of the State of New York.

6. On February 6, 2017, Plaintiff ordered, online and while at work in Manhattan, EWI's Earthbath All Natural Pet Shampoo, subsequently received via UPS in Manhattan, in response to Defendant's advertisements on Amazon.com:²

Earthbath All Natural Pet Shampoo

by **Earthbath**



1,958 customer reviews | 131 answered questions

#1 Best Seller in Dog Shampoos

Price: **\$9.49** & **FREE Shipping** on orders over \$35. [Details](#)

7. Mr. Qin has since determined, from a source of unquestioned accuracy, that a primary ingredient in the Product, being referred to as a non-descript “renewable plant-derived and coconut-based cleanser,” is actually a synthetic chemical known as Sodium Cocoamphoacetate (“SCA”). It is not “All natural” as advertised.

8. Although this amphoteric surfactant is derived from coconut fatty acids, it is made by a chemical process involving imidazoline and other chemicals. This foam-boosting, viscosity-building chemical is not found in nature. Further, SCA is a secondary surfactant, meaning that it is generally not used as the only surfactant in a body care formulation.

9. Further chemical analysis will identify other Surfactants, such as Cocamidopropyl Betaine or Cocamide DEA. These latter substances have high irritation potential. Their biggest danger is contamination with nitrosamines, most of

² https://www.amazon.com/s/ref=nb_sb_ss_i_8_10?url=search-alias%3Daps&field-keywords=earthbath+oatmeal+%26+aloe+shampoo&prefix=earthbath+%2Caps%2C201&crid=18NPFR3B6WWM5 (last visited March 29, 2017)

which are carcinogenic. Nitrosamines have been identified as one of the most potent classes of carcinogens, having caused cancer in more than 40 different animal species as well as in humans.

10. Earthwhile Endeavors, Incorporated is a California corporation with its principal place of business at 231 9th Street, San Francisco, CA 94103-3826. Founded in 1995, the company develops and manufactures shampoos, grooming wipes and foams, and spritzes for pets in the United States. The company markets its products through dealers and ecommerce sites such as amazon.com.

11. EWI has grown, from the original line of three shampoos and one conditioner sold locally in San Francisco, CA, into a comprehensive line including All Natural/Totally Natural Shampoo, Grooming Wipes, Deodorizing Spritz and Grooming Foam. Earthbath was voted the #1 selling pet shampoo brand in Pet Age Retailer Survey 2013-2014.

**PRIOR FEDERAL TRADE COMMISSION PROCEEDINGS
CONCERNING “ALL NATURAL” AND “100% NATURAL” CLAIMS**

12. The Federal Trade Commission has made clear in its official pronouncements, rules and orders that it is false and deceptive to advertise or package a product as “All natural” or “100% Natural” if it contains one or more synthetic products. <https://www.ftc.gov/news-events/blogs/business-blog/2016/04/are-your-all-natural-claims-all-accurate>.

13. The Federal Trade Commission has made clear in its official pronouncements, rules and orders that “[i]f companies market their products as ‘all natural’ or ‘100% natural,’ consumers have a right to take them at their word.” *Id.*

14. The Federal Trade Commission has provided a uniform prerequisite of “All Natural” and “100% Natural,” i.e. zero synthetic ingredients.

15. As a significant player in the pet care industry, EWI is keenly aware of its regulatory environment and the risks associated with non-compliance.

16. As to pets, The FTC’s policies are clear:

‘Two-thirds of all Americans have pets at home, and they spend billions of dollars to ensure that their pets are healthy and well-fed,’ said Jessica Rich, Director of the FTC’s Bureau of Consumer Protection. ‘Pet owners count on ads to be truthful and not to misrepresent health-related benefits.’

<https://www.ftc.gov/news-events/press-releases/2016/08/mars-petcare-settles-false-advertising-charges-related-its>

17. The Federal Trade Commission has recently sued and settled with four personal care products manufacturers, and is litigating with a fifth, by reason of “All Natural” or “100% Natural” representations, thereby affording definitive guidance to the industry, consumers and the courts.

18. EWI has violated the law for many years, has not heeded the FTC’s warnings, and has found great success in deceiving the public.

FACTS

19. Although cats are self-cleaners, they do benefit from occasional baths which keep their coats healthy and clean. Cat owners often seek pet shampoos that will not dry out the skin, irritate eyes, or cause skin irritation. One such class of gentle shampoos is that using oat protein and aloe vera.

20. However, in addition to searching out specific beneficial shampoo ingredients that ARE in the product, consumers are wise to make certain that detrimental

products ARE NOT in the product. See “Shampoos just for pets,” at <http://www.drsfostersmith.com/pic/article.cfm?aid=2241>

21. To best protect their cats from harmful substances, some cat (and other pet) owners seek out “All Natural” and “100% Natural” shampoo, which to watchful consumers indicate the absence of synthetic substances, harsh detergents and toxic chemicals.

22. The FTC has announced and warned publicly that “All Natural” and “100% Natural” means the absence of any synthetic ingredients:

If companies market their products as ‘all natural’ or ‘100% natural,’ consumers have a right to take them at their word. . . . According to the FTC, the companies pitched their products as ‘all natural’ or ‘100% natural,’ but included synthetic ingredients. . . . If you advertise your product as ‘all-natural’ or ‘100% natural’ and it contains artificial ingredients or chemicals, now is the natural time for a compliance check.

“Are your ‘all natural’ claims all accurate?” <https://www.ftc.gov/news-events/blogs/business-blog/2016/04/are-your-all-natural-claims-all-accurate>.

23. Although each of the products in its line of “All-Natural” and “Totally Natural” Pet Shampoos contains—indeed, is dominated by--synthetic ingredients, EWI deceptively and misleadingly packages, labels, describes and markets at least 7 such shampoo Products as both “Totally Natural” and “All Natural” including (without limitation) the following products (“Shampoos”):

- ***Green Tea Leaf Shampoo*** - Purified water, renewable coconut-based natural cleansers, extracts of green tea leaf, ginger & Hawaiian awapuhi, aloe vera, vitamin E, olive oil squalene (natural preservative)
- ***Hypo-Allergenic Shampoo*** - Purified water, extra-mild renewable coconut- based cleansers, aloe vera, xanthan gum, olive oil squalene (natural preservative)

- ***Mango Tango Shampoo & Conditioner in One*** - Purified water, renewable coconut-based cleansers, gentle-conditioning agent, aloe vera, mango essence, olive oil squalene (natural preservative)
- ***Oatmeal & Aloe Shampoo*** - Purified water, renewable coconut-based cleansers, colloidal oatmeal (3%), aloe vera, almond and vanilla essences, olive oil squalene (natural preservative)
- ***Eucalyptus & Peppermint Shampoo*** - Purified water, renewable coconut-based cleansers, eucalyptus & peppermint essences, olive oil squalene (natural preservative)
- ***Tea Tree Oil & Aloe Vera Shampoo*** - Purified water, renewable coconut-based cleansers, aloe vera, xanthan gum, melaleuca oil (tea tree), olive oil squalene (natural preservative)
- ***Light Color Coat Brightener Shampoo*** - Purified water, renewable coconut-based cleansers, optical brighteners, essence of lavender, olive oil squalene (natural preservative)

24. The principal ingredient in each of these seven (7) shampoos (besides water) is SCA and one or more other surfactants which are synthetic and *unnatural* . . . not natural as represented.

25. In fact, avoiding *all* synthetic chemicals is the only way a consumer can know that her product contains no chemical toxins whatever. EWI knowingly and willingly deceives and misleads consumers by labeling and marketing its Products as “All Natural” and “Totally Natural.”

26. Each of the seven (7) Products detailed in ¶23 contains SCA and other surfactants, which are synthetic and otherwise objectionable as causing allergic reactions, eye irritation, skin discomfort and potential contamination concerns.

27. EWI’s conduct harms consumers by inducing them to purchase at premium prices and utilize the line of purported All Natural/Totally Natural Products, on

the false premise that they are All Natural when, in fact, Products contain ingredients that are not natural.

28. “All Natural” is a material factor in each consumer’s selection of Products. Consumers acting reasonably under the circumstances, however, cannot detect the presence of synthetic ingredients and, hence, may use such Products on their pets for months or years unwittingly. The Product is absorbed into the skin, the body’s largest organ, and thereby interacts biologically with other organs.

29. EWI has individuated its Products as All Natural to enable, unjustly, enhanced profitability and market share.

30. Throughout the Class Period and long before, EWI systematically and prominently advertised, labeled and packaged its Products as “All Natural”—and more recently “Totally Natural” (along with “All Natural”)-- such that every consumer shopping the Products is necessarily exposed to these misrepresentations.

31. Based on either EWI’s online advertising, see ¶6 *supra*, and/or the Product bottle itself, any reasonable consumer would believe the Products to be natural and not synthetic:

